

**United States Department of Labor
Employees' Compensation Appeals Board**

K.M., Appellant

and

**DEPARTMENT OF AGRICULTURE,
AGRICULTURAL RESEARCH SERVICE,
Wapato, WA, Employer**

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**Docket No. 09-03
Issued: April 9, 2009**

Appearances:

John Eiler Goodwin, Esq., for the appellant

No appearance, for the Director

Oral Argument March 4, 2009

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 30, 2008 appellant filed a timely appeal from a September 18, 2008 decision of the Office of Workers' Compensation Programs denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained chronic fatigue syndrome, chronic pain syndrome or fibromyalgia in the performance of duty.

FACTUAL HISTORY

This is the second appeal before the Board. By decision dated July 23 2007,¹ the Board remanded the case for appropriate development to determine if a December 7, 1997 employment incident under File No. xxxxxx265 caused or aggravated chronic fatigue syndrome, chronic pain

¹ Docket No. 07-609 (issued July 23, 2007).

syndrome or fibromyalgia. The law and the facts of the case as set forth in the prior decision are incorporated by reference.

On remand, the Office reconstructed the record in File No. xxxxxx365. On December 8, 1997 appellant, then a 47-year-old biological scientific technician, filed a traumatic injury claim (Form CA-1) alleging that, on December 7, 1997, she sustained lumbar and thoracic back pain after being “jerked” while closing a metal gate in an icy parking lot. On the reverse of the form, appellant’s supervisor indicated that the incident occurred as alleged.

Appellant submitted treatment notes dated December 31, 1997 to December 20, 1999 from Dr. Larry Lefors, an attending osteopathic physician. On December 31, 2007 Dr. Lefors related appellant’s account of the December 7, 1997 incident. He stated that there were no abnormal findings on physical examination and that appellant’s soft tissue texture had improved. In subsequent reports, Dr. Lefors noted appellant’s complaints of insomnia, depression, fatigue, generalized musculoskeletal pain, weakness, lumbar pain, left hip pain and dietary intolerances. He diagnosed chronic fatigue syndrome, fibromyalgia, adrenal insufficiency, depression and hypertension. Dr. Lefors recommended dietary changes, hormone supplements and stretching exercises.

In July 30 and August 4, 2008 letters, the Office advised appellant of the additional medical and factual evidence needed to establish her claim. It emphasized the importance of submitting rationalized medical evidence contemporaneous to the December 7, 1997 injury, explaining how and why that incident would cause the claimed conditions. Appellant was afforded 30 days to submit additional evidence.

In an August 20, 2008 letter, appellant stated that she had no history of chronic pain or chronic fatigue prior to the December 7, 1997 incident. She asserted that she slipped and fell while closing a metal parking lot gate, landing on her left hip and buttock. In a December 20, 1999 letter, Dr. Lefors explained that appellant’s symptoms became apparent after the December 7, 1997 incident. He diagnosed fibromyalgia and chronic fatigue syndrome.

By decision dated September 18, 2008, the Office denied appellant’s claim on the grounds that causal relationship was not established. It found that the medical evidence was insufficiently rationalized to establish that the December 7, 1997 incident caused chronic fatigue syndrome, chronic pain syndrome or fibromyalgia. The Office noted that the December 7, 1997 claim was an uncontroverted “no time lost case” that was not formally adjudicated.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which

² 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

The Office accepted that the December 7, 1997 incident caused a lumbar strain. The case was originally processed as a "no time lost" injury with brief medical care. Appellant later claimed that the December 7, 1997 incident also caused chronic fatigue syndrome, chronic pain syndrome and fibromyalgia. The Office denied the occupational disease claim on the grounds that appellant submitted insufficient medical evidence to establish causal relationship.

Appellant submitted treatment notes from December 31, 1997 to December 20, 1999 by Dr. Lefors, an attending osteopathic physician. The December 31, 1997 examination was normal. In later reports, Dr. Lefors diagnosed chronic fatigue syndrome, musculoskeletal pain and fibromyalgia. However, he did not address how or why the accepted December 1997 lumbar strain would cause chronic fatigue syndrome, chronic pain syndrome and fibromyalgia. Dr. Lefors did not set forth the pathophysiologic mechanisms whereby the accepted lumbar strain or other aspects of the December 7, 1997 would cause the diagnosed conditions. His opinion is thus insufficiently rationalized to establish causal relationship.⁶ Dr. Lefors merely noted that appellant's symptoms began after the incident dated December 7, 1997. However, temporal relationship alone is insufficient to establish causal relationship.⁷

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ *Louis R. Blair, Jr.*, 54 ECAB 348 (2003).

The Office advised appellant by July 30 and August 4, 2008 letters of the need to submit rationalized medical evidence explaining how and why the December 7, 1997 incident would cause the claimed conditions. Appellant did not submit such evidence. Therefore, she did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she sustained chronic fatigue syndrome, chronic pain syndrome or fibromyalgia in the performance of duty. Appellant submitted insufficient rationalized medical evidence to establish causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 18, 2008 is affirmed.

Issued: April 9, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board